

NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 3300 Newport Boulevard
Thursday, May 19, 2011
REGULAR MEETING
6:30 p.m.

A. CALL TO ORDER - The meeting was called to order at 6:30 p.m.

B. PLEDGE OF ALLEGIANCE – Led by Commissioner Toerge

C. ROLL CALL

PRESENT: Ameri, Hawkins, McDaniel, Toerge, and Unsworth
ABSENT (EXCUSED): Eaton and Hillgren

Staff Present: James Campbell, Acting Planning Director, Gregg Ramirez, Senior Planner, Leonie Mulvihill, Deputy City Attorney, Janet Brown, Associate Planner, Kay Sims, Assistant Planner, and Marlene Burns, Administrative Assistant

D. PUBLIC COMMENTS – None.

E. REQUEST FOR CONTINUANCES – None.

F. CONSENT ITEMS

ITEM NO. 1 Minutes of May 5, 2011

Commissioner Hawkins offered the following corrections to the minutes of May 5, 2011: 1) Page 1, Public Comments, Commissioner Hawkins recalled that there was general consensus among the Commission that the Planning Division should regard public speaker Purcell's comments as "complaints" which should be then forwarded to Code Enforcement, 2) Page 1, Minutes, Mr. Hawkins suggested that if corrections are made to the presented minutes, the motion should read, "minutes...as corrected," 3) Page 3 of 6, Mr. Hawkins recalled that he seconded the motion related to the Irvine Company Project item.

Motion made by Commissioner Hawkins and seconded by Commissioner Toerge, and carried (5 – 0) to approve the minutes as corrected.

AYES: Ameri, Hawkins, McDaniel, Toerge, and Unsworth
NOES: None.
ABSENT: Eaton and Hillgren
ABSTAIN: None.

G. PUBLIC HEARING ITEMS

ITEM NO. 2 3-Thirty-3 Waterfront Restaurant (PA2011-041)
333 Bayside Drive

Staff report and a brief PowerPoint Presentation was provided by Janet Brown, Associate Planner. Brian Moore, Newport Beach Police Department was also present.

The application consists of a request for a new conditional use permit to extend the hours of operation granted by Accessory Outdoor Dining Permit No. 2007-001 for an existing outdoor dining patio from 9:00 a.m. to 9:30 p.m. daily to 9:00 a.m. to 1:00 a.m. daily. The hours of operation for the interior portion of the

existing restaurant are 9:00 a.m. to 2:00 a.m. daily, as allowed by Use Permit No. 3325 (amended). If approved, the new conditional use permit will supersede the existing use permit and accessory outdoor dining permit, and an Operator License will be required.

Associate Planner Brown noted that subsequent to the publication of the staff report, new additional complaints were received from residents of Linda Isle and were distributed to the members of the Planning Commission. Staff's recommendation was developed utilizing input from the City's Code Enforcement Division, Harbor Resources Commission, and Police Department. Associate Planner Brown noted that based on this input, it appeared that the applicant had taken corrective measures to comply with the existing conditions of approval associated with this use.

Staff and Commission discussion ensued regarding the Police Department's ability to enforce a reduction of operational hours if the applicant had an "operator's license," the fact that the conditions of the operator's license apply to the entire subject establishment, that sufficient "facts and findings" must be presented to curtail operations at the subject establishment, the prohibition of certain activities under Condition of Approval Number 21, and the circumstances under which the Conditional Use Permit would return to the Planning Commission for review and/or revocation.

Jeff Reuter, applicant, expressed concerns that his project was not the initiator of the majority of complaints received regarding the project, rather, the concurrent reconstruction of the adjacent marina and docks contributed significantly to the environmental noise, that the outdoor patio use was not an extension of the bar, and that the environmental noise would reduce once the construction of the marina and docks was completed, and that the agreement for the operator's license would subject the whole project to stringent conditions in order to obtain additional hours for outdoor dining service.

Discussion ensued between the Planning Commission and the applicant regarding the "fair hearing" process, the dining "cycles" of patrons, the demographic and dining differences between patrons utilizing the interior and exterior sections of the restaurant.

Chair McDaniel opened the public hearing and public comments.

Frank Battaile, an attorney representing several residents living adjacent to the subject property, spoke in opposition to the extension of the hours for the exterior of the restaurant, that previous noise mitigation measures have not been successful, expressed concerns regarding the potential illegality of delegating the authority of the Planning Commission to the Police Department and/or City Manager, without the ability for appeal back to the Planning Commission, the implication that the Police Department is supportive of this project as described in a previous written memorandum, and that the decreases in noise over the past months were a result of patrons not using the patio during the colder winter months.

Dr. David Benvenuti, resident, stated that he was originally in support of the restaurant when it first opened, however, he expressed concerns that the noise impacts are getting worse. He further stated that residents are not always calling Code Enforcement even though incidents are occurring, that the use of the restaurant is primarily a "club and party" use, rather than a dining use, and that he has filed formal complaints with the Police Department regarding the deck being open later than the current restricted hours.

Donna Viana, Vice President, Linda Isle Homeowners Association, spoke in opposition to the extension of the patio hours, that the letters in support of the project were "form" letters, and stated that although she enjoys and has visited the restaurant for lunch and early dinner dining, she noted that each time she has visited the restaurant, the windows are always opened, contributing to the ambient noise impacts to the adjacent neighborhood.

Dan Purcell, Corona del Mar resident, stated that he was not expressing support or opposition to the project. He did note his opinion that the restaurant was primarily a "late at night" nightclub and that the Planning Commissioners and City Council have a fiduciary responsibility to see "for themselves" what activities are occurring at the subject properties they are discussing.

Don McCalla, 22 year resident, acknowledged that the current restaurant applicant has done a good job in mitigating certain matters (valet and smoking issues), referenced documentation compiled by his spouse which detailed complaints regarding the subject property since July 2010, noted that there are no mutually-agreed upon sound studies that have been conducted, and expressed concerns that the restaurant will continue to produce ambient noise and other negative impacts due to expansion of the patio use hours. He referenced the lack of attenuated windows in the outdoor dining area, and the types of uses he has observed at the subject property, including "shooter parties."

Sandy McCalla, submitted a document for the record which documented her observations of noise impacts since July 2010, she noted that deck dining cannot be projected to be for older patrons only, and also noted that the ambient noise is audible to the adjacent residences even with windows closed, and that the restaurant is primarily a "club and party" destination. In addition, she referenced incidences of live music on the patio.

Leann Benvenuti, spoke in opposition to the project, noted that the noise is "intolerable" during the summer months, and expressed concerns that the ambient noise level would only increase if the hours of patio operation were extended. Ms. Benvenuti acknowledged the improvements that were made after the applicant moved the valet and smoking sections to the alternate side of the subject property.

Chair McDaniel closed the public comments and the public hearing. He reopened the public hearing in order for the applicant, Jeff Reuter, to respond to the public testimony.

Jeff Reuter, applicant, stated that the matter before the Commission was related to dining and that patrons are not allowed on the dining deck unless they eat dinner. Alcohol-only sales are not permitted.

Discussion ensued among Commission, Staff, and Mr. Reuter, related to the design scope of the outside dining area, the historical requirements that governed the outside patio design development and the type of dining and restaurant use that occurs during different times of the evening.

Chair McDaniel closed the public comment and public hearing.

Detective Moore, Newport Beach Police Department, provided a report related to the submitted memorandum regarding the subject property. He indicated that Police Department personnel visited the site during various hours and, occasionally in an undercover capacity to observe activities during various restaurant hours. He mentioned that the adjacent docks could be contributing to the ambient noise and that patrons were not observed on the patio after 9:30 p.m. Detective Moore indicated that only a small percentage of patrons are consuming a full meal after 11:00 p.m. and the majority of patrons after that time were participating in cocktail service.

Commissioner Toerge and Hawkins and Chair McDaniel indicated that they would not be supporting the proposal.

Commissioner Hawkins suggested that he would support a motion to deny "without prejudice," have the applicant respond to the feasibility of enclosing the patio structure, and to have staff work with the applicant to come to a compromise solution or general plan amendment and address required parking.

Commissioner Ameri suggested that the applicant enclose the entire patio to eliminate any noise impacts and to possibly consider a variance for the parking requirement.

Motion made by Commissioner Hawkins and seconded by Commissioner Toerge, and carried (5 – 0) to deny the approval of Conditional Use Permit No. UP2011-007.

AYES: Ameri, Hawkins, McDaniel, Toerge, and Unsworth
NOES: None.
ABSENT: Eaton and Hillgren
ABSTAIN: None.

ITEM NO. 3 Fisher Residence (PA2010-034)
3725 Ocean Boulevard

Staff report and a brief PowerPoint Presentation was provided by Assistant Planner Kay Sims.

The applicant requests approval of a variance to allow a proposed single-family dwelling to exceed the 24-foot height limit for flat roofs within the R-1 (Single-Unit Residential) Zoning District. Additionally, the proposed single-family dwelling would exceed the “top of curb” height limit for properties on the bluff side of Ocean Boulevard. The applicant also requests a modification permit to allow the proposed single-family dwelling to encroach into the required 10-foot front and 4-foot side setbacks (caissons), and site-retaining walls (and caissons) with related railings adjacent to the side property lines which exceed the 6-foot height limit allowed within side setback areas.

Chair McDaniel opened the public hearing and public comments.

Desmond Fischer, property owner and applicant, stated that the existing property is a “blight” in the community and that his proposed project will provide an enhanced visual presentation for both the City and the adjacent residents, discussed the three matters for which he is requesting variances, that he has tried to address all matters presented by adjacent neighbors, and to mitigate noise, traffic, and other construction impacts for the duration of the project.

Discussion ensued between the Commissioners and the applicant regarding fireplace “exhaust” vents for the project and the preliminary title report and associated potential litigation matters. The applicant stated that all matters related to the Title had been resolved and were reflected in the title report submitted with his application.

John McInnes, architect for the applicant’s subject property, presented exhibits of the proposed project and addressed the proposed solutions to concerns expressed by adjacent property owners. Mr. McInnes noted that the project will not require closure of Ocean Boulevard, construction access is not proposed to extend beyond the “predominant line of development” existing on the property, and that a study was conducted regarding various driveway alternatives and percentages of slope and the design, as submitted, was the best alternative.

Discussion ensued among the Commission and Mr. McInnes regarding the proposed ceiling heights and required emergency exit provisions and equipment.

Dan Purcell, Corona del Mar resident, supported the applicant’s efforts to mitigate the construction impacts of the project.

Donald Stoughton, adjacent property owner located directly across Ocean Boulevard from the subject project, spoke in support of the project.

Dorris Stoughton, adjacent property owner located directly across Ocean Boulevard from the subject project, stated that another project on the bluff side of Ocean Boulevard took six years for completion of construction and inquired as to whether the timeline for the construction on this project could be reduced.

Chair McDaniel closed the public comments and the public hearing.

Acting Planning Director Campbell noted that there is no limitation on the building activities once a building permit is issued and work commences within one hundred eighty days. It is expected that once the project commences, construction work should be continuous until the project is completed.

Chair McDaniel reopened the public hearing and public comments to allow the applicant to state that he anticipates the project to be completed, barring rain impacts, in twenty-four months. Chair McDaniel then closed public comments and the public hearing.

In response to an inquiry from Commissioner Hawkins, Acting Planning Director Campbell noted that timelines for completion of exterior construction have not been implemented on projects of this size.

Commissioner Toerge stated that although an alternative location for the garage set back further from the front property toward the ocean side would allow the project to be built in compliance with existing curbside height restrictions; such a design alternative was not practical.

Commissioner Hawkins stated that the required findings for the modification permit could be made, but that an additional statement to support encroachments into the side-yard setbacks should be added to the first finding for the modification permit in the final documents.

Commissioner Ameri suggested a future discussion by the Planning Commission to review construction project timelines.

Motion made by Commissioner Toerge and seconded by Commissioner Hawkins, and carried (5 – 0) to adopt a resolution approving Variance No. VA2010-001 and Modification Permit No. 2010-006, with the amendments with the following addition:

- *“Below ground caissons and shoring walls within the side setbacks are necessary to provide stability for construction of the project due to the steep slope of the subject lot. The above ground retaining walls are necessary along the side property lines to provide stability for the site and to support an ingress and egress stairway from the lower area of the lot to the higher area at the front of the property and Ocean Boulevard. The retaining walls along the side property lines are also necessary to provide privacy for residents of the subject property and neighboring properties.”*

AYES:	Ameri, Hawkins, McDaniel, Toerge, and Unsworth
NOES:	None.
ABSENT:	Eaton and Hillgren
ABSTAIN:	None.

ITEM NO. 4 Review of Preliminary Fiscal Year 2011-2012 Capital Improvement Program (PA2007-131)

Staff report was provided by Gregg Ramirez, Senior Planner.

Review of the City's Capital Improvement Program (CIP) is required by the City Charter and State Statute. The purpose of the review is to determine consistency with the General Plan and to make recommendations to the City Council concerning proposed public works projects.

Commission and staff discussion ensued regarding the proposed cost (\$400,000) for the study, concept, and design for a Lifeguard Headquarters project, whether the proposed project for the Crystal Cove parking lots were consistent with the City's General Plan, and park improvements as related to the Civic Center Improvement Project.

Motion made by Commissioner Unsworth and seconded by Commissioner Hawkins, and carried (5 – 0) to receive and file the report, as amended by Commission Toerge, and accepted by the maker of the motion, to include the Commission's discussion on this matter, to determine that the CIP projects are consistent with the policies of the General Plan, and to report this finding to the City Council.

AYES: Ameri, Hawkins, McDaniel, Toerge, and Unsworth
NOES: None.
ABSENT: Eaton and Hillgren
ABSTAIN: None.

H. NEW BUSINESS – None.

I. STAFF AND COMMISSIONER ITEMS

ITEM NO. 5 Acting Planning Director reported on the relevant actions taken by the City Council at their recent meeting, the appointment of the new Community Development Director, and items for upcoming Planning Commission meetings.

ITEM NO. 6 Planning Commission reports.

Commissioner Hawkins suggested the consolidation or elimination of Planning Commission Item No. 6.

ITEM NO. 7 Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.

Commissioner Hawkins requested an update report on the recent Planning Commission recommendations made on in-lieu parking fees, waiver of fees for Planning Commission appeals, and the minor use permit for late hour restaurants.

ITEM NO. 8 Request for excused absences.

An excused absence was granted for Commissioner Hillgren related to the June 9, 2011, Planning Commission meeting.

ADJOURNMENT - The Planning Commission adjourned at 9:30 p.m. to 4:00 p.m. on June 9, 2011.